
Judiciary Committee

HB 2952

Title: An act relating to allowing civil forfeiture of conveyances used in prostitution-related offenses.

Brief Description: Allowing civil forfeiture of conveyances used in prostitution-related offenses.

Sponsors: Representatives O'Brien, Kirby, Sullivan, Schual-Berke, Ericks, Kelley and Conway.

Brief Summary of Bill
<ul style="list-style-type: none">Allows civil forfeiture of certain vehicles used in prostitution-related crimes.

Hearing Date: 2/1/08

Staff: Jim Morishima (786-7191).

Background:

Prostitution-Related Offenses

Commercial Sexual Abuse of a Minor (formerly Patronizing a Juvenile Prostitute): A person is guilty of Commercial Sexual Abuse of a Minor if he or she pays or agrees to pay a fee for a minor having engaged in sexual conduct, pays or agrees to pay a fee pursuant to an understanding that the minor will engage in sexual conduct, or solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee. Commercial Sexual Abuse of a Minor is a class C felony with a seriousness level of III (1-3 months in jail for a first offense).

Promoting Commercial Sexual Abuse of a Minor: A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct. Promoting Commercial Sexual Abuse of a Minor is a class B felony with a seriousness level of VIII (21-27 months in prison for a first offense).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Promoting Travel for Commercial Sexual Abuse of a Minor: A person is guilty of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in conduct that would amount to Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor. Promoting Travel for Commercial Sexual Abuse of a Minor is an "unranked" class C felony (0-12 months in jail).

Prostitution: A person is guilty of Prostitution if he or she engages or agrees or offers to engage in sexual conduct with another person for a fee. Prostitution is a misdemeanor (0-90 days in jail).

Promoting Prostitution in the first degree: A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances, or profits from, prostitution by compelling a person to engage in Prostitution by threat or force. Promoting Prostitution in the first degree is a class B felony with a seriousness level of VIII (21-27 months in prison for a first offense).

Promoting Prostitution in the second degree: A person is guilty of Promoting Prostitution in the second degree if he or she knowingly profits from Prostitution or advances Prostitution. Promoting Prostitution in the second degree is a class C felony with a seriousness level of III (1-3 months in jail for a first offense).

Promoting Travel for Prostitution: A person is guilty of Promoting Travel for Prostitution if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in Patronizing a Prostitute or Promoting Prostitution. Promoting Travel for Prostitution is an "unranked" class C felony (0-12 months in jail).

Patronizing a Prostitute: A person is guilty of Patronizing a Prostitute if he or she: (a) pays a fee, pursuant to a prior understanding, as compensation for another person having engaged the perpetrator in sexual conduct, (b) pays or agrees to pay another person pursuant to an understanding that the person will engage in sexual conduct with the perpetrator, or (c) solicits or requests another person to engage in sexual conduct with the perpetrator for a fee. Patronizing a Prostitute is a misdemeanor (0-90 days in jail).

Civil Forfeiture

There are many civil forfeiture statutes covering a wide variety of topics. Most civil forfeitures occur in the context of criminal violations. For example, the Uniform Controlled Substances Act provides for the civil forfeiture of materials and products used in the manufacture and distribution of illegal drugs. Other subjects involving civil forfeiture provisions include animals, child pornography, cigarettes, drunk driving, driving with suspended license, explosives, and money laundering. Civil forfeiture statutes generally allow for notice and the opportunity to be heard for the property owner. The standard of proof in civil forfeiture proceedings can be different from the underlying crime, so it is therefore possible for a person who is not charged with a crime or found not guilty of a crime to have his or her property seized.

The Prostitution Prevention and Intervention Account

Persons convicted of Promoting Prostitution in the first or second degree, Commercial Sexual Abuse of a Minor, Patronizing a Prostitute, Indecent Exposure, Prostitution, or Permitting Prostitution, are assessed a fee. The fee is deposited into the Prostitution Prevention and Intervention Account, which funds the Prostitution Prevention and Intervention Services Grant

Program. The program provides funding for programs that provide effective prostitution prevention and intervention services, including counseling, parenting, housing relief, education, and vocational training.

Summary of Bill:

A local governing authority may designate areas within which conveyances may be subject to civil forfeiture when they are used to facilitate the following prostitution-related offenses: Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, Promoting Travel for Commercial Sexual Abuse of a Minor, Prostitution, Promoting Prostitution in the first degree, Promoting Prostitution in the second degree, Promoting Travel for Prostitution, and Patronizing a Prostitute. The designation must be based on evidence indicating that the area has a disproportionate number of arrests for the prostitution-related offenses. The local governing authority must post signs that indicate that the area has been designated.

A conveyance is not subject to forfeiture if: (a) the act giving rise to the forfeiture was committed without the owner's knowledge or consent, (b) forfeiture proceedings have not been instituted within 10 days of the owner's arrest, or (c) the conveyance was being used as a common carrier and the owner of the conveyance was not a consenting party or privy to the act giving rise to the forfeiture. A conveyance subject to a bona fide security interest is subject to the interest of the secured party if the act giving rise to the forfeiture was committed without the secured party's knowledge and consent.

Forfeiture proceedings are initiated by the seizure of the conveyance in question. The conveyance may be seized by any law enforcement agency of the state upon process issued by the superior court having jurisdiction over the property. Seizure without process may be made if: (a) the seizure is incident to arrest or search under a search warrant, (b) the conveyance subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding, or (c) a board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in a prostitution-related offense.

Once the forfeiture proceedings have been initiated, the seizing law enforcement agency must provide notice of the seizure to the owner and other persons having an interest in the conveyance. If no person notifies the agency to the person's claim of ownership within 45 days the conveyance is forfeited.

If a person does notify the seizing agency of a claim of ownership, the person must be given the opportunity to be heard. The hearing must be in front of the chief law enforcement officer of the seizing agency (or his or her designee) or an administrative law judge. The person may also remove the proceeding to a court of competent jurisdiction. In such a proceeding, the law enforcement agency has the burden to prove, by a preponderance of the evidence, that the property is subject to forfeiture. If the person is determined to be the present lawful owner of, or is entitled to possession of, the property, the seizing law enforcement agency must promptly return the property. In such a case, the person is entitled to reasonable attorneys' fees.

When property is forfeited, a board or law enforcement agency may:

- Retain it for official use;
 - Sell that which is not required to be destroyed by law and which is not harmful to the public;
- or

- Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with the law.

The seizing law enforcement agency must keep a record of all forfeited property. The record must include the identity of the prior owner, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from the disposition of the property. The seizing agency must maintain the record for seven years and must submit quarterly reports to the State Treasurer.

Each seizing agency must annually remit to the State Treasurer an amount equal to the greater of ten percent of the net proceeds of any property forfeited during the year or the net proceeds of any property forfeited during the year minus administrative costs. The proceeds remitted to the State Treasurer must be deposited in the Prostitution Prevention and Intervention Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.